IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

CIVIL NO. 1:05CV20

SUSAN LYNN BOGAN and JEFFREY MICHAEL BOGAN,)
Plaintiffs)
v) ORDER DENYING) MOTION TO MODIFY
HAWKSNEST SKI & SNOW) PRETRIAL ORDER
TUBING, INC. , Defendant,	

THIS MATTER is before the court on plaintiffs' Motion to Modify Pre-Trial Order and Case Management Plan. In reviewing such motion the undersigned has conferred with Honorable Lacy H. Thornburg, United States District Judge, concerning his expectations for the trial of this matter.

For cause, plaintiffs argue that the deadlines imposed will not allow their experts to observe the snow-tubing hill where the accident allegedly took place during the winter months; however, review of the Complaint reveals that the alleged accident occurred on or about December 31, 2003, and that plaintiffs filed their action January 28, 2005; thus, nearly two complete ski seasons have passed since the accident during which plaintiffs' expert could have observed the ski slope.

The Asheville Division has been the venue for a number of diversity ski cases. Relying on institutional memory, there have been a great number of cases which concerned varying ski conditions, the design of various slopes, and the operations of ski areas, but the court simply cannot recall a motion for expansion of discovery so that an expert could observe a slope covered with snow. Further, the court has closely read the Complaint and it appears that plaintiff's key contention is that defendant provided Ms. Bogan with a tube

that was too large, thereby preventing her from braking with her feet, causing her to collide with a berm of packed snow. Waiting for snow would appear to add little to the investigation of this accident, an investigation that should have been commenced well before the Complaint was filed.

Trial is set for April 2006, which is already four months beyond the time usually allowed for trial in the Asheville Division, and comes at the end of the 2006 ski season. After consulting with the district court, the motion will be denied and all previously set deadlines will remain in force.

Inasmuch as counsel for defendant does not oppose such motion, respective counsel are referenced to the provisions of the Pretrial Order which allow for the taking of consensual discovery up to 10 days before trial, and Rule 29, Federal Rules of Civil Procedure, which allow the parties to stipulate as to certain discovery procedures.

ORDER

IT IS, THEREFORE, ORDERED that plaintiffs' Motion to Modify Pre-Trial Order and Case Management Plan (#11) is **DENIED**.

Signed: August 16, 2005

Dennis L. Howell United States Magistrate Judge